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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/673,846
Filing Date: September 29, 2003
Appellant(s): HETTISH, MARK BERNARD

Randolph P. Calhoune
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/1/10 appealing from the Office action mailed

7/29/09.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application Serial Number 10/673,390

Application Serial Number 10/673,522

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7 and 15-17

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2002/0116336   Diacakis et al.   8-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   **Claims 1-7 and 15-17** are rejected under 35 U.S.C. 102(b) as being anticipated by

Diacakis et al. (US 2002/0116336, hereinafter "Diacakis").

In regards to **claim 1**, **Diacakis** teaches a method, comprising:

−   interfacing an identity oriented context application that represents a context of an identity based on an availability or state of the identity with a device oriented context application that determines an availability or state of a device associated with the identity, where the identity is a person or a group of persons **(Diacakis; Fig. 1; Fig. 4 – presence detection engine interpreted as device oriented context system since it determines user's presence on particular devices, and availability management engine interpreted as identity oriented context system since it determines user's availability based on user's situation; par [0026]; par [0044]-[0045])**;

−   determining, by said device oriented context system, a device oriented context for a specific device associated with the identity **(Diacakis; par [0043]-par [0044] – "*to determine if the individual is present on a landline telephone, for example, the landline desk phone 44 in his office,*" "*to determine if the individual is present on his mobile phone 46*", "*to determine whether an individual is present on other devices such as, for example, a personal digital assistant (PDA) 50 or a pager 52*"; Fig. 8)**, wherein said device oriented context provides an availability status of said specific device **(Diacakis; par [0026]; par [0043]-par [0044] – a landline telephone is clearly a specific device for which an availability status is determined, as is a PDA; par [0045]; par [0053])**;

– determining, by said identity oriented context system, an identity oriented context for said identity, wherein said identity oriented context provides an availability status of said identity **(Diacakis; par [0046]; par [0056]; par [0059]; Fig. 8)**;

– determining an availability rule associated with said identity, the availability rule governing when or how the identity is available, when or how the identity can be contacted by other identities, how or when the identity can be contacted based on the identity oriented context of the identity, and how or when the identity can be contacted based on the device oriented context of the identity **(Diacakis; par [0031]; par [0034]; par [0038] – *"determine the individual's availability based on the presence information as well as additional information, such as the individual's situation and defined rules and preferences"*; par [0040] – *"For example, if the individual had scheduled to be in his office from 9am to 5pm, the presence detection engine 18 may determine that during that time period the individual is present on the networks available to him in his office, which may be, for example, telephone and instant messaging."*)**;

– determining, for a specific time, a true availability of said identity based, at least in part, on said determined device oriented context for said specific device associated with said identity, said determined identity oriented context and said determined availability rule at said specific time **(Diacakis; par [0026]; par [0034] – par [0035]; par [0038]; par [0040] – *"As illustrated in FIG. 4, the presence detection engine 18 may receive various inputs to determine, to the extent possible, the individual's presence. One type of input that the presence detection engine 18 may use to help determine the***

individual's presence is time-based input 40."; **par [0043] – par [0044]; par [0056];**

[0059]; Fig. 8); and

– providing data indicative of said true availability of said identity **(Diacakis; par [0035];**

Fig. 8).

In regards to **claim 2**, **Diacakis** teaches the method of claim 1, further comprising receiving a

request for information regarding true availability of said identity **(Diacakis; par [0029] – par**

[0030]).

In regards to **claim 3**, **Diacakis** teaches the method of claim 1, wherein said determining said

true availability of said identity includes determining availability of said identity via at least two

different media channels **(Diacakis; par [0031], lines 21-25; par [0035]; par [0038]; par**

[0040]; par [0043] – par [0044]).

In regards to **claim 4**, **Diacakis** teaches the method of claim 1, further comprising

establishing said availability rule **(Diacakis; par [0031])**.

In regards to **claim 5**, **Diacakis** teaches the method of claim 1, wherein said providing data

indicative of said true availability of said identity includes displaying an interface indicative of

said availability **(Diacakis; par [0056]; Fig. 8)**.

In regards to **claim 6**, **Diacakis** teaches the method of claim 5, wherein said interface

identifies said identity **(Diacakis; par [0056]; Fig. 8)**.

In regards to **claim 7**, **Diacakis** teaches the method of claim 1, further comprising

determining said identity **(Diacakis; par [0038]; par [0056]; Fig. 8)**.

Claims 15 and 16 are each rejected with the same rationale given for claim 1.

In regards to **claim 17**, **Diacakis** teaches the method of claim 1, wherein said identity is

associated with a plurality of devices **(Diacakis; par [0026]; par [0044] – par [0045]; Fig. 8)**.

(10) Response to Argument

Claims 1-7 and 15-17 are Patentable

Appellant argues that Diacakis does not teach the claimed device oriented context

application and mapping a new device oriented context to the identity oriented context.

The examiner first notes that certain features upon which appellant relies (i.e., mapping a

new device oriented context to the identity oriented context) are not recited in the rejected

claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993).

With respect to appellant's argument that Diacakis does not teach the claimed device

oriented context application, the examiner respectfully disagrees and refers to Fig. 1 and Fig. 4,

reference character 18, of Diacakis, where the Presence Detection Engine constitutes the claimed

device oriented context application.

The appellant incorrectly argues at page 8 of the Appeal Brief that the examiner is

interpreting the P&A management server 12 of Diacakis to be equivalent to the claimed device

oriented context application. This is not accurate. Rather, as set forth in the rejections above,

the examiner is interpreting the Presence Detection Engine 18 of Diacakis to be equivalent to the

claimed device oriented context application since it determines a user's presence on particular

devices based on the availability of the devices (Diacakis; Fig. 1; Fig. 4; par [0026]).

For example, par [0026] of Diacakis recites, in part, *"the wireless **telephone is switched***

***off**, then that person is not present on a telephone network, and thus unable to communicate with*

others on the telephone network." This teaches that if the phone is in a status of "off" the person

is not present because ***the phone is unavailable***. Therefore, the presence provides an availability

of the device, i.e. unavailable. Par [0045] of Diacakis recites, in part, *"Based on **the presence***

***information on such devices 44-52**, the presence detection engine 18 may determine additional*

information about the individual" and *"based on information regarding each of these devices*

44-53 the presence detection engine 18 may determine the individual's current capabilities 58

such as, for example, whether he can receive voice information, data files, audio files, video

files, etc." Therefore, Diacakis explicitly mentions determining presence information about

particular **devices**.

Appellant goes on to argue that, in Diacakis, the presence detection engine is related to

and oriented towards an individual, and not a device. The examiner respectfully asserts that,

even assuming that is true, that does not in any way diminish the fact that Diacakis still teaches

determining the context of particular devices, as evidenced above. Diacakis then uses the device

oriented context information along with other information to determine a true availability of an

identity, as set forth in the rejection above. More importantly, the examiner respectfully asserts

that, as cited by the appellant on page 7 of the Appeal Brief, the appellant's own specification

recites the following at page 6, lines 3-9 with respect to device oriented contexts: "***An identity***

may have one or more devices associated with it. Each device may have an associated device

context. Context for a device may describe the work or non-work state, and/or the availability

or non-availability state, that the device is in*. For example, the person's office telephone may be*

busy, set to "do not disturb," automatic call forwarding, offline, etc." Therefore, the device

oriented contexts, even according to the appellant's specification are related to and oriented

towards an individual, or identity, at least in as much as the device oriented contexts of Diacakis

are. In other words, in both Diacakis and the claimed invention, the devices are associated with

an individual and the context of the device is used to determine the availability of the individual.

Clearly, to determine an individual's presence on a device, the presence of the device is

necessarily determined as well. For example, for a user to be present on a telephone or pda, the

telephone or pda must be on and in an available communication network. Likewise, if a

telephone or pda is determined to be off or unavailable, the user cannot be available on that

device. However, just because the context and availability of the device naturally affects the

context and availability of the associated individual does not take away from the fact that the

context and availability of the device is indeed determined. Clearly, determining that a telephone

is off constitutes determining an availability status of a specific device associated with an

individual.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/K. P./

Primary Examiner, Art Unit 2161

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